Georgia State University Law Review

Volume 15
Issue 1 *Fall 1998*

Article 24

3-15-2012

CRIMES AND OFFENSES Crimes Against the Person: Redefining Stalking; Provide for Issuance of Enforcement of Restraining Orders, Protective Orders, and Approval of Consent Orders; Provide that Violation of a Permanent Restraining Order or a Permanent Protective Order Constitutes Aggravated Stalking; Increase Penalty for Stalking and Aggravated Stalking; Provide for Psychological Evaluation and Consideration of Entire Criminal Record of an Offender Convicted of Stalking Before Sentencing; Authorize Order for Psychological Treatment as Part of Sentence or as a Condition of Stay, Suspension of Sentence, or

Recommended Citation

Georgia State University Law Review (1998) "CRIMES AND OFFENSES Crimes Against the Person: Redefining Stalking; Provide for Issuance of Enforcement of Restraining Orders, Protective Orders, and Approval of Consent Orders; Provide that Violation of a Permanent Restraining Order or a Permanent Protective Order Constitutes Aggravated Stalking; Increase Penalty for Stalking and Aggravated Stalking; Provide for Psychological Evaluation and Consideration of Entire Criminal Record of an Offender Convicted of Stalking Before Sentencing; Authorize Order for Psychological Treatment as Part of Sentence or as a Condition of Stay, Suspension of Sentence, or Probation; Provide Temporary Ex Parte Relief and Authorize Conversion of Temporary Orders to Permanent Orders; Provide for Jurisdiction, Petitions, Hearings, Procedures, Forms of Petitions and Pleadings, and Contents of Such Orders," *Georgia State University Law Review*: Vol. 15: Iss. 1, Article 24.
Available at: http://scholarworks.gsu.edu/gsulr/vol15/iss1/24

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Probation; Provide Temporary Ex Parte Relief and Authorize Conversion of Temporary Orders to Permanent Orders; Provide for Jurisdiction, Petitions, Hearings, Procedures, Forms of Petitions and Pleadings, and Contents of Such Orders

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CRIMES AND OFFENSES

Crimes Against the Person: Redefine Stalking; Provide for Issuance and Enforcement of Restraining Orders, Protective Orders, and Approval of Consent Orders; Provide that Violation of a Permanent Restraining Order or a Permanent Protective Order Constitutes Aggravated Stalking; Increase Penalty for Stalking and Aggravated Stalking; Provide for Psychological Evaluation and Consideration of Entire Criminal Record of an Offender Convicted of Stalking Before Sentencing; Authorize Order for Psychological Treatment as Part of Sentence or as a Condition of Stay, Suspension of Sentence, or Probation; Provide Temporary Ex Parte Relief and Authorize Conversion of Temporary Orders to Permanent Orders; Provide for Jurisdiction, Petitions, Hearings, Procedures, Forms for Petitions and Pleadings, and Contents of Such Orders

CODE SECTIONS:	O.C.G.A. §§ 16-5-90 to -91 (amended), -94 (new)
BILL NUMBER:	HB 1639
ACT NUMBER:	865
GEORGIA LAWS:	1998 Ga. Laws 885
SUMMARY:	The Act redefines the offense of stalking to include conduct that puts a victim in fear of his or her safety, rather than just conduct that puts the victim in fear of death or bodily harm. The Act also authorizes permanent restraining orders and permanent protective orders, and adds that violation of such orders constitutes aggravated stalking. The Act increases the maximum penalty for both stalking and aggravated stalking from five to ten years. The Act requires consideration of the offender's entire criminal record before sentencing for a conviction of stalking or aggravated stalking and authorizes sentencing judges to require a psychological evaluation of the offender. In addition, the Act authorizes psychological treatment as part of the sentence or as a

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condition for stay or suspension of sentence or for probation. The Act provides for temporary ex parte relief and allows for the conversion of temporary orders into permanent orders.

EFFECTIVE DATE: July 1, 1998

History

In 1990, California passed the first stalking law in the United States, thus igniting the passage of stalking laws in forty-eight states and the District of Columbia.[1] This trend resulted from highly publicized celebrity stalking cases, like that of *My Sister Sam* co-star Rebecca Schaeffer, and an increase in the occurrence of violent crimes connected to stalking.[2] Stalking victims generally range in age from fifteen years old to seventy years old.[3] One out of every forty-five people will be stalked during his or her lifetime.[4]

Before specific stalking statutes were enacted, the police could take little action to protect victims from stalkers until after serious harm to the victim had already occurred.[5] For instance, Georgia had statutes pertaining to assault, battery, and terroristic threats, but nothing that covered harassing and intimidating behavior.[6] Thus, magistrates would not issue a restraining order short of the defendant physically harming the victim or threatening the victim's life.[7] In response to similar circumstances, many other state legislatures enacted stalking statutes to provide increased and more immediate access to police protection and to increase the punishment for such behavior as a deterrent.[8]

Prior to 1993, Georgia laws protected the public from many violent crimes, such as assault, battery, and murder, but did not protect

1. *See* Dean Copelan, Comment, *Is Georgia's Stalking Law Unconstitutionally Vague?*, 45 MERCER L. REV 853 (1994).

2. *See id.*; Matthew J. Gilligan, Note, *Stalking the Stalker: Developing New Laws to Thwart Those Who Terrorize Others*, 27 GA. L. REV. 285, 287 (1992).

3. *See Lawmakers '98* (GPTV Broadcast, Feb. 24, 1998) (remarks by Detective Debbie Hollan) (available in Georgia State University College of Law Library).

4. *See id.*

5. *See* Gilligan, *supra* note 2, at 285-86.

6. *See* Telephone Interview with Detective Debbie Hollan, East Cobb County Investigation Unit (Oct. 20, 1998) [hereinafter Hollan Interview].

7. *See id.*

8. *See* Gilligan, *supra* note 2, at 301.

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people from being harassed and intimidated by other individuals.[9] In 1993, however, the Georgia General Assembly provided protection against such harassment and intimidation by enacting Code sections 16-5-90 to -93 that prohibit stalking and provide penalties for those convicted of stalking.[10] As originally enacted, Code section 16-5-90 provided that one "commits the offense of stalking when he or she follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person."[11] The Code section also defined "place or places" as any public or private property other than the defendant's home[12] and defined "harassing and intimidating" as knowingly and willfully placing another person in "reasonable fear of death or bodily harm to himself or herself" or to one of his or her immediate family members without a legitimate purpose.[13] Further, the Code section classified a first offense of stalking as a misdemeanor and classified any and all subsequent stalking offenses as felonies subject to one to five years in jail.[14]

Code section 16-5-91 of the 1993 stalking statute, defined "aggravated stalking" as violating a temporary restraining order, temporary protective order, preliminary or permanent injunction, or condition of pretrial release, probation, or parole by following or contacting another person without his or her consent at a "place or places" in order to harass or intimidate that person.[15] Subsection (b) of that Code section classified aggravated stalking as a felony and imposed imprisonment of one to five years and a fine not to exceed $10,000.[16] In 1995, the Georgia General Assembly amended this Code section to include the violation of a peace bond in the definition of aggravated stalking.[17]

Code section 16-5-92 of the 1993 stalking statute, exempted people engaged in constitutionally protected activity, and people lawfully engaged in business activity or professional practice from the

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9. *See Review of Selected 1993 Georgia Legislation*, 10 GA. ST. U. L. REV. 95 (1993).
10. *See id.*
11. 1993 Ga. Laws 1534 (codified at O.C.G.A. § 16-5-90(a) (1996)). This wording remained unchanged under the Act. *See* O.C.G.A. § 16-5-90(a) (Supp. 1998).
12. *See* 1993 Ga. Laws 1534 (codified at O.C.G.A. § 16-5-90(a) (1996)).
13. *Id.* (formerly found at O.C.G.A. § 16-5-90(a) (1996)).
14. *See id.* at 1536 (formerly found at O.C.G.A. § 16-5-90(b), (c) (1996)).
15. *Id.* (formerly found at § 16-5-91(a) (1996)).
16. *See id.* (formerly found at § 16-5-91(b) (1996)).
17. *See* 1995 Ga. Laws 911 (codified at O.C.G.A. § 16-5-91(a)(1996)); *Review of Selected 1995 Georgia Legislation*, 12 GA. ST. U. L. REV. 105 (1995).

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statute.[18] Finally, Code section 16-5-93 of the 1993 stalking law, entitled stalking victims to notice of their stalkers' release from custody and provided for how such notice should be carried out.[19] That Code section also stated that the agency or its employee's failure to effectuate the requisite notice may result in termination of employment or other disciplinary action; however, the victim is not entitled to remedial damages.[20]

Representative Sharon Cooper attended a workshop on domestic violence given by Detective Debbie Hollan and Judge Dick Reynolds of Cobb County, where she learned that the stalking law was ineffective in deterring harassing and intimidating behavior and in protecting victims from harm.[21] After a thorough inquiry into the ineffectiveness of the statute, she drafted HB 1639 to help educate judges and the public about the psychological aspects of stalking, as well as how to prevent or deter stalking altogether.[22] HB 1639 amends the stalking law, as provided in Code sections 16-5-90 to -93, in an effort to implement stricter standards so that victims receive protection before their stalkers harm them.[23]

The Act

The Act codifying HB 1639 amends Code section 16-5-90 by changing the definition of "harassing and intimidating" from conduct that places another person "in reasonable fear of death or bodily harm to himself or herself" or to a family member, to conduct that places another person "in reasonable fear for such person's safety or the safety of a [family] member."[24] The General Assembly changed the definition because the previous language proved ineffective.[25] Stalkers often want to possess their victims, rather than harm them or threaten to kill them, and, although the law said that the threat did not have to

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18. *See* 1993 Ga. Laws 1534, § 1, at 1536 (codified at O.C.G.A. § 16-5-92 (1996)).
19. *See id.* at 1536-38 (codified at O.C.G.A. § 16-5-93 (1996)).
20. *See id.* (codified at O.C.G.A. § 16-5-93(i) (1996)).
21. *See* Telephone Interview with Rep. Sharon Cooper, House District No. 31 (May 26, 1998) [hereinafter Cooper Interview].
22. *See id.*
23. *See id.*
24. *Compare* 1993 Ga. Laws 1534, § 1, at 1535 (formerly found at O.C.G.A. § 16-5-90(a) (1996)), *with* O.C.G.A. § 16-5-90(a) (Supp. 1998).
25. *See* Hollan Interview, *supra* note 6. Victims could not obtain restraining orders without proving overt death threats even though they were suffering "mental terrorism." *Id.*

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be overt, many cases were being dismissed because the victim failed to prove a fear of death or bodily harm.[26] Under the new language, victims have a lesser standard to meet in order to obtain the protection that they deserve.[27] The Act also adds "by establishing a pattern of harassing and intimidating behavior" to the definition of stalking.[28] The author added this requirement to help avoid abuse of the system by people who overreact or become vindictive.[29]

Further, the Act changes the penalty for felony stalking convictions from one to five years imprisonment to one to ten years.[30] The increased penalty stems from a number of cases where the stalker received no monitoring after release and, once again, threatened to kill or harm the victim.[31] With an increased penalty for the crime, judges are more likely to enhance bail requirements too, so that more stalkers will remain in jail while awaiting trial on the stalking charges.[32]

Additionally, the Act includes a new provision that authorizes the judge to require a psychological evaluation of the offender and that requires the judge to consider the offender's entire record before sentencing.[33] Stalking is a pattern crime—once defendants stalk they will most likely stalk again.[34] By requiring the psychological evaluation and the review of the offender's record, the judge can look for such patterns and adjust the punishment accordingly.[35] Punishment may include psychological treatment for the offender and/or a longer jail sentence, hopefully resulting in a reduced recidivism rate after the stalker's release.[36] This provision also empowers the judge to issue a permanent restraining order against the offender and to require psychological treatment as part of the sentence or as a condition of suspension, stay of sentence, or

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26. *See* Cooper Interview, *supra* note 21.
27. *See id.*
28. O.C.G.A. § 16-5-98(a) (Supp. 1998). *Compare id. with* 1993 Ga. Laws 1534, § 1, at 1535-36 (formerly found at O.C.G.A. § 16-5-90(a) (1996)).
29. *See* Cooper Interview, *supra* note 21.
30. *Compare* 1993 Ga. Laws 1534, § 1, at 1536 (codified at O.C.G.A. § 16-5-90(b) (1996)), *with* O.C.G.A. § 16-5-90(b) (Supp. 1998). The Act also amends Code section 16-5-91 to increase the penalty for aggravated stalking from one to five years to one to ten years. *See* O.C.G.A. § 16-5-91 (Supp. 1998).
31. *See* Cooper Interview, *supra* note 21.
32. *See* Hollan Interview, *supra* note 6.
33. *See* O.C.G.A. § 16-5-90(d) (Supp. 1998).
34. *See* Hollan Interview, *supra* note 6.
35. *See id.*
36. *See id.*

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probation.[37] The author added this provision in an effort to educate judges that stalking offenders are mentally ill and that the particular offense pending before that judge is not the result of a passing phase.[38] Offenders, more often than not, have a psychological disorder ranging from a mild personality defect to severe psychosis.[39] If offenders receive the help they need, future victims will not have to undergo the stress and humiliation a stalker may cause.[40] Empowering the judge to issue the permanent restraining order allows an offender's automatic return to jail upon violation, thus enabling victims to build cases against their stalkers without enduring continued harassment and intimidation.[41]

Finally, the Act adds a new Code section permitting a person who is not a minor to file a petition for a restraining order when alleging that he or she has been stalked by another person.[42] Prior to the enactment of this Code section, the only provision for such an order existed in domestic violence laws.[43] In those cases, the court required proof that the parties had a familial relationship or lived in the same household before it would issue the restraining order.[44] The new provision allows a person being stalked by a boyfriend or girlfriend, or even a by stranger, to protect himself or herself through obtaining a restraining order.[45] The Code section also establishes jurisdiction over such petitions[46] and authorizes the court to take action on such petitions if they contain specific facts that establish probable cause that the person allegedly stalking the victim has stalked in the past and is likely to do so in the future.[47] The court may either grant a protective order or approve a consent agreement between the victim and the alleged stalker to stop such conduct, and may order that certain conduct must stop, award attorney's fees to either party, and

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37. *See* O.C.G.A. § 16-5-90(d) (Supp. 1998). Code section 16-5-91 was also amended to include permanent restraining order violations to make it consistent with the addition made to Code section 16-5-90. *See id.* § 16-5-91; Cooper Interview, *supra* note 21; Hollan Interview, *supra* note 6.
38. *See* Cooper Interview, *supra* note 21.
39. *See id.*; Hollan Interview, *supra* note 6.
40. *See* Cooper Interview, *supra* note 21.
41. *See id.*; *see* Hollan Interview, *supra* note 6.
42. *See* O.C.G.A. § 16-5-94(a) (Supp. 1998).
43. *See* Hollan Interview, *supra* note 6.
44. *See id.*
45. *See id.*
46. *See* O.C.G.A. § 16-5-94(b) (Supp. 1998).
47. *See id.* § 16-5-94(c).

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order parties to undergo psychiatric or psychological treatment.[48] Finally, the new Code section applies the procedural requirements for family violence petitions to the petitions permitted by this Code section.[49]

HB 1639

HB 1639 was introduced in the House on February 13, 1998.[50] The House Special Judiciary Committee passed a substitute on February 24, 1998,[51] which merely added the "pattern of harassing and intimidating behavior" language to the definition of stalking in Code section 16-5-90(a).[52] The Committee substitute went to the House floor and passed on March 6, 1998.[53] Subsequently, the bill went to the Senate Judiciary Committee and passed on March 13, 1998.[54] The Senate offered a floor amendment, which included more specific provisions on a hearing for the petitions permitted by Code section 16-5-94 and amendments to Code sections 42-1-12, 16-3-23 and -24.[55] The floor amendment also limited the judge's authorization to require psychological or psychiatric counseling, so that judges could only require it of offenders, rather than of any or all parties.[56] HB 1639 passed the Senate, as amended, on March 16, 1998, and was sent to the House for concurrence.[57] When the House refused to concur with those amendments on March 18, 1998, the Senate receded from the amendments and the bill's language was restored to that of the House Committee substitute.[58] Governor Zell Miller signed HB 1639 into law on April 14, 1998.[59]

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48. *See id.* § 16-5-94(d).
49. *See id.* § 16-5-94(e); *see also* 1981 Ga. Laws 880, § 3, at 881 (codified at O.C.G.A. § 19-13-3(c)-(d) (Supp. 1998)) (setting forth procedure for temporary protective orders); *id.* § 4, at 881 (codified at O.C.G.A. §19-13-4(b)-(d) (Supp. 1998)) (setting forth procedure for protective orders and consent agreements); *id.* § 5, at 882 (codified at O.C.G.A. § 19-13-5 (1991)) (noting that above constitute additional, not exclusive, remedies).
50. *See* State of Georgia Final Composite Status Sheet, Mar. 19, 1998.
51. *See id.*
52. HB 1639 (HCS), 1998 Ga. Gen. Assem.
53. *See* State of Georgia Final Composite Status Sheet, Mar. 19, 1998.
54. *See id.*
55. *See* HB 1639 (SCSFA), 1998 Ga. Gen. Assem.
56. *See id.*
57. *See* State of Georgia Final Composite Status Sheet, Mar. 19, 1998.
58. *See id.*
59. *See* 1998 Ga. Laws 885, at 888.

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